

**BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Joseph M. Asher, *et. al.*
Application No. : 10/816,238 Confirmation No. : 9139
Filed : April 1, 2004
For : ELECTRONIC SILENT AUCTION SYSTEM AND
METHOD
Group Art Unit : 3625
Examiner : Robert M. Pond

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

This is an appeal from the decision of Examiner Robert M. Pond, Group Art Unit 3625, in the Final Office Action of November 19, 2007, rejecting claims **11-18, 20** and **38-64** in the present application. A Notice of Appeal was filed on February 11, 2008.

Applicants herewith request a five-month extension of time, which extends the time to file this paper to September 11, 2008.

The Commissioner is hereby authorized to charge the filing fee and the five-month extension of time fee, as well as any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-3938.

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I. REAL PARTY IN INTEREST

The real party in interest of the present application is BGC Partners, Inc., a corporation organized and existing under the laws of the State of Delaware, U.S.A., and having a place of business at 110 East 59th Street, New York, NY 10022.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

III. STATUS OF CLAIMS

The following claims are pending and stand rejected in the present application:

- Independent claims **11, 41** and **53**.
- Dependent claims **12-18, 20, 38-40, 42-52** and **54-64**.

The following claims are being appealed:

- Independent claims **11, 41** and **53**.
- Dependent claims **12-18, 20, 38-40, 42-52** and **54-64**.

The following claims have been cancelled:

- Independent claims **1, 21** and **33**
- Dependent claims **2-10, 19, 22-32** and **34-37**

IV. STATUS OF AMENDMENTS

No amendments have been filed after the Final Office Action of November 19, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention(s) generally relate to computer implemented methods for electronic silent auctioning systems.

Specifically, independent claims **11**, **41** and **53** are directed, respectively, to a method, apparatus and an article of manufacture that enable the selecting of an item for auction, in which the item is selected from a plurality of items stored on a server. *See, e.g.*, Specification, page 17, line 30 – page 18, line 4; Figure 1, step 205. As recited by these claims, an indication that the selected item is available for auction for a period of time is transmitted. *See, e.g.*, Specification, page 18, lines 19-22. At least one bid to purchase the selected item is received from each of a plurality of bidders, in which each bid is received before the period of time has expired and each bidder is located remotely from the server. *See, e.g.*, Specification, page 19, lines 5-8.

As further recited by the claims, the system determines that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value. *See, e.g.*, Specification, page 21, lines 3-11. A winning bid for the selected item is determined based on predetermined criteria. *See, e.g.*, Specification, page 19, lines 18-20; page 20, lines 3-12.

Dependent claims **18**, **48** and **60** are directed, respectively, to a method, apparatus and an article of manufacture, in which the identifier of the bidder comprises a card number that is coupled with a card reader. *See, e.g.*, Specification, page 15, lines 6-15; page 21, lines 21-30. The card reader is operable to process a card associated with the card number. *Id.*

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds for rejection to be reviewed on appeal are whether:

- Independent claims **41** and **53** are indefinite under 35 U.S.C. § 112, paragraph 4.
- Claims **11-17, 20, 38-47, 49-59** and **61-64** are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent Application No. 20020062276 (hereinafter “Krueger”) in view of U.S. Patent No. 6,704,713 (hereinafter “Brett”).
- Claim **18, 48** and **60** are unpatentable 35 U.S.C. § 103(a) over Krueger in view of Brett and U.S. Patent No. 5,803,500 (“Mossberg”).

VII. ARGUMENT

A. Summary of Argument

Although the Examiner objects to independent claims **41** and **53** under 37 C.F.R. § 1.75(c), in actuality, the Examiner is implying that claims **41** and **53** have violated 35 U.S.C. § 112, paragraph 4, which requires that a dependent claim must specify a further limitation of the subject matter of a previous claim. Final Office Action of November 19, 2007, page 2. As such, the rejection of claims **41** and **53** is properly subject to appeal in this brief.

This rejection is improper because the Examiner mischaracterizes claims **41** and **53** as dependent claims. Independent claims **41** and **53** are written as claims which reference a preceding claim—an acceptable claim construction that is proper. Thus, the Examiner has failed to establish a *prima facie* case for failure to comply with 35 U.S.C. § 112, paragraph 4 for claims **41** and **53**.

The Examiner also rejects claims **11-17, 20, 38-47, 49-59** and **61-64** under 35 U.S.C. § 103(a) as being unpatenable over Krueger in view of Brett. Final Office Action of November 19, 2007, page 3. However, neither Krueger nor Brett discloses the following feature of independent claims **11, 41** and **53**, namely “*determining that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value*” (emphasis added).

Instead, the Examiner mischaracterizes Brett as describing “*a second predetermined value*,” when in actuality, Brett merely describes a single threshold. Since Krueger and Brett fail

to describe a limitation of independent claims **11, 41** and **53**, the Examiner has not established a *prima facie* case of obviousness with respect of claims **11, 41** and **53** (and the claims that depend therefrom).

Furthermore, the Examiner fails to provide any evidence for the motivation to combine Krueger and Brett. All factual findings of the Patent and Trademark Office must be supported by substantial evidence. Since motivation to combine is a factual finding, it must be supported by some evidence. Because the Examiner does not provide any evidence to support the motivation to combine Krueger and Brett, he has not established a *prima facie* case of obviousness with respect of claims **11, 41** and **53** (and the claims that depend therefrom).

The Examiner also rejects claims **18, 48** and **60** under 35 U.S.C. § 103(a) as being unpatentable over Krueger in view of Brett and Mossberg. Final Office Action of November 19, 2007, page 7. This rejection is improper because the Examiner fails to provide any evidence for the motivation to combine Krueger, Brett, and Mossberg. All factual findings of the Patent and Trademark Office must be supported by substantial evidence. Since motivation to combine is a factual finding, it must be supported by some evidence. Because the Examiner does not provide any evidence to support the motivation to combine Krueger, Brett, and Mossberg, he has not established a *prima facie* case of obviousness with respect of claims **18, 48** and **60**.

B. Legal Standard**1. Legal Standard – *Prima Facie* Showing**

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Applicants are entitled to grant of the patent. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992). The initial burden of presenting a *prima facie* case of obviousness is upon the Examiner. In re Oetiker, 977 F.2d at 1445. If the Examiner fails to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned. In re Rijckaert, 9 F.3d 1531, 1532 (Fed. Cir. 1993); Novamedix Distrib. Ltd. V. Dickinson, 175 F.Supp. 2d 8, 9 (D.D.C. 2001).

2. Legal Standard – Failure to Comply with 35 U.S.C. § 112, paragraph 4

A claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. 35 U.S.C. § 112, paragraph 4. Reference to a preceding claim in order to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing. Ex parte Porter, 25 USPQ2d 1144 (Bd. Pat. App. & Inter. 1992). A claim to a device, apparatus, manufacture, or composition of matter may contain a reference to the process in which it is intended to be used without being objectionable, so long as it is clear that the claim is directed to the product and not the process. In re Luck, 476 F.2d 650, 177 USPQ 523 (CCPA 1973).

3. Legal Standard – Obviousness

To reject claims under 35 U.S.C. § 103, an Examiner must show an un rebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974).

In addition, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference. The Examiner must support with substantial evidence of record a factual finding of a suggestion or motivation to modify a reference. Novamedix Distrib., 175 F. Supp. 2d at 9; In re Zurko, 258 F.3d 1379, 1383-1386 (Fed. Cir. 2001); In re Lee, 277 F.3d 1338, 1342 (Fed. Cir. 2002). Although the teachings, suggestions, or motivations need not always be written references, the obviousness test must proceed on the basis of some evidence. See Ortho-McNeil Pharmaceutical v. Mylan Labs, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

Although an obviousness analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, the rejection of a patent on obviousness grounds cannot be sustained by mere conclusory statements. KSR Int'l Co. v. Teleflex, Inc., 127 S.Ct. 1727, 1741 (2007). There must be some articulated reasoning with some rational underpinning to support a legal conclusion of obviousness. *Id.* A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int'l Co., 127 S.Ct. at 1741. It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way

the claimed invention does, since claimed discoveries almost of necessity will be combinations of what, in some sense, is already known. *Id.* A factfinder must be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. KSR Int'l Co., 127 S.Ct. at 1742.

C. Rejection Under 35 U.S.C. § 112, paragraph 4

1. First Group: Claims 41 and 53 – No *Prima Facie* Showing of Failure to Comply with 35 U.S.C. § 112, paragraph 4

The Examiner objects to independent claims **41** and **53** under 37 C.F.R. § 1.75(c) as being of improper dependent form “for failing to further limit the subject matter of a previous claim.” Final Office Action of November 19, 2007, page 2. In actuality, the Examiner is implying that claims **41** and **53** has violated 35 U.S.C. § 112, paragraph 4, which requires that a dependent claim must specify a further limitation of the subject mater of a previous claim. As such, the rejection of claims **41** and **53** is subject to appeal in this brief.

This rejection is improper because the Examiner mischaracterizes claims **41** and **53** as dependent claims. Independent claims **41** and **53** are written as claims which reference a preceding claim—an acceptable claim construction that is proper.

Claims **41** and **53** are, respectively, apparatus and article of manufacture claims which refer to a method claim. Claim **41** begins by reciting “an apparatus” and contains a clear reference to only the claimed “apparatus”, so there is no confusion that it might be a method claim or anything other than an apparatus claim. Likewise, claim **53** begins by reciting “an article of manufacture” and contains a clear reference to only the claimed “article of

manufacture”, so there is no confusion that it might be a method claim or anything other than an article of manufacture claim.

A product claim may refer to a method claim and still be an independent claim. Having a reference to another claim does not always render the claim dependent.

For example, an independent product-by-process claim is a claim for a product, but contains a reference to a method claim. This type of claim is proper. A product-by-process claim is not dependent on the method claim since it does not “further limit” the method claim. Moreover, a product-by-process claim may be infringed without infringing the method claim it refers to (e.g., by selling the product). Thus, the product-by-process claim cannot be dependent on the method claim, since infringement of a dependent claim necessarily implies infringement of the base claim.

Therefore, claims **41** and **53** are independent, and Applicants have paid the appropriate fee for these independent claims. These claims have been written in simplified form for the convenience of the Examiner. Because the Examiner has incorrectly characterized independent claims **41** and **53** as being written in improper dependent form, the Examiner has failed to establish a *prima facie* case of failure to comply with 35 U.S.C. § 112, paragraph 4.

D. Rejection under 35 U.S.C. § 103(a)

Claims **11-17, 20, 38-47, 49-59** and **61-64** were rejected under 35 U.S.C. § 103(a) as being unpatentable over Krueger in view of Brett. Final Office Action of November 19, 2007, page 3. Claim **18, 48** and **60** were rejected under 35 U.S.C. § 103(a) as being unpatentable over Krueger in view of Brett and Mossberg. Final Office Action of November 19, 2007, page 7.

1. **Second Group: Claims 11-17, 20, 38-47, 49-59 and 61-64 – No *Prima Facie* Showing of Obviousness**
 - a. **Krueger and Brett do not disclose all of the limitations of claims 11-17, 20, 38-47, 49-59 and 61-64**

SEPARATE ARGUMENT OF PATENTABILITY

Independent claims **11**, **41** and **53** are directed, respectively, to a method, an apparatus and an article of manufacture that describes, *inter alia*, “*determining that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value.*”

Neither Krueger nor Brett discloses “*a second quantity of bids that is received before a second time interval is less than a second pre-determined value*”. Specifically, in rejecting claims **11**, **41** and **53** the Examiner concedes that:

Krueger does not mention *determining that the period of time has expired based on determining that a first quantity of bids that is received before a first time interval is less than a first pre-determined value...* Krueger does not mention *a second quantity of bids that is received before a second time interval is less than a second pre-determined value...* (emphasis added). Final Office Action of November 19, 2007, page 5 and page 7.

Instead, the Examiner asserts, without providing specific citations or any other reasoning, that Brett discloses a “bidding activity meter [that] allows the system to have an adjustable bidding window based upon bidding activity.” *Id.* at page 5. The Examiner further asserts, without support or any other reasoning, that the “adjustable bidding window may be defined as

an adjustable period of time that may be immediately terminated upon the bidding rate reaching a predefined low threshold.” *Id.* at page 6.

By way of example, the Examiner recited, from col. 13, lines 1 to 30 of Brett, an example of an auction that accept bids for at least five hours until 3 p.m., but no more than fourteen hours, until 12 p.m. Bidding remains open after 3 p.m., so long as the bidding continues above a predetermined threshold. If the bidding drops below the predetermined threshold, the auction will be closed immediately. According to the Examiner,

... if the threshold is 1000 bids per hour, and the total bidding during the hours of 9p.m. and 10 p.m. drops to 900 bids, the auction will close and no further bids will be taken. *Id.* at page 6.

Based on this example, the Examiner asserts, without support or any other reasoning, that the “900 bids that is used to close the bidding session” is an example of a “second threshold” taught by Brett. *Id.* at page 7.

The Examiner is mistaken. The Examiner mischaracterizes the “drop to 900 bids” as a predetermine value. In fact, nowhere does the cited-portion of Brett describe “*a second pre-determined value.*” Rather, the “900 bids” merely represent an instance in which the total bidding drops below Brett’s threshold rate of 1000 bids per hour. It does not indicate “*a second pre-determined value.*” If the bidding had dropped to 950 bids or 800 bids, it still would have triggered Brett’s 1000 bid threshold. Thus, the “900 bids” that is used in Brett’s example does not illustrate “*a second predetermined value.*”

Because the Examiner fails to show all the limitations of independent claims **11**, **41** and **53**, are taught or suggested by Krueger and Brett, he does not establish a *prima facie* case of

obviousness with respect to these claims. The rejection of claims **11, 41 and 53** (and claims **12-17, 20, 38-40, 42-47, 49-52, 54- 59** and **61-64**, which depend therefrom) is thereby improper.

b. No support for the motivation to combined Krueger and Brett.

SEPARATE ARGUMENT OF PATENTABILITY

The alleged motivation proffered by the Examiner for combining Krueger and Brett has absolutely no basis in the references themselves or in any other evidence of record. All factual findings of the Patent and Trademark Office must be supported by substantial evidence. Since motivation to combine is a factual finding, it must be supported by some evidence. The Examiner fails to provide any evidence to support the proffered motivation to combine Krueger and Brett.

Instead, the Examiner merely provides general, sweeping and inappropriate assertions of an alleged motivation to combine the references, without any specific support.

For example, on page 6, the Examiner claims that:

...it would have been obvious to one of ordinary skill in the art at time of the invention to modify Krueger to implement determining that the period of time has expired based on determining that a first quantity of bids that is received before a first time interval is less than a first pre-determined value as taught by Brett, ***because a person of ordinary skill has good reason to pursue the known options within his or her technical grasps*** (emphasis added).

However, the Examiner fails to provide any evidence indicating that the act of “*determining that the period of time has expired based on determining that a first quantity of bids that is received before a first time interval is less than a first pre-determined*” would have

been a known option to a person of ordinary skill. Nor does the Examiner provide any evidence indicating that such an act would have been within the technical grasps of a person of ordinary skill. The Examiner fails to provided any evidence that one with knowledge of known options would have found it obvious to combine that option in the manner proposed to render the claimed invention obvious

Thus, the Examiner fails to establish a *prima facie* case of obviousness with respect to these claims. The rejection of claims **11, 41 and 53** (and claims **12-17, 20, 38-40, 42-47, 49-52, 54- 59 and 61-64**, which depend therefrom) is thereby improper.

2. Third Group: Claims 18, 48 and 60 – No *Prima Facie* Showing of Obviousness

a. No support for the motivation to combined Krueger, Brett and Mossberg.

SEPARATE ARGUMENT OF PATENTABILITY

The alleged motivation proffered by the Examiner for combining Krueger, Brett and Mossberg has absolutely no basis in the references themselves or in any other evidence of record. All factual findings of the Patent and Trademark Office must be supported by substantial evidence. Since motivation to combine is a factual finding, it must be supported by some evidence. The Examiner fails to provide any evidence to support the proffered motivation to combine Krueger, Brett and Mossberg.

Instead, the Examiner merely provides general, sweeping and inappropriate assertions of an alleged motivation to combine the references, without any specific support.

For example, on page 9, the Examiner claims that:

...it would have been obvious to one of ordinary skill in the art at time the invention was made [sic] disclose a card and card reader for bidder identification as taught by Mossberg, *because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp* (emphasis added).

However, the Examiner fails to provide any evidence indicating that “a card and card reader for bidder identification” would have been a known option to a person of ordinary skill. Nor does the Examiner provide any evidence indicating that “the card and card reader” would have been within the technical grasps of a person of ordinary skill. The Examiner fails to provide any evidence that one with knowledge of known options would have found it obvious to combine that option in the manner proposed to render the claimed invention obvious

Thus, the Examiner fails to establish a *prima facie* case of obviousness with respect to dependent claims **18, 48** and **60**. The rejection of these claims is thereby improper.

E. Conclusion

In view of the foregoing, Appellants submit that all of the pending claims are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner’s rejection of these claims.

Respectfully submitted,

/Ruth J. Ma/

September 11, 2008
Date

Ruth J. Ma
Reg. No. 55,414
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IX. CLAIMS APPENDIX

1-10. (Cancelled).

11. (Previously Presented) A method comprising:

selecting an item for auction, in which the item is selected from a plurality of items stored on a server;

transmitting an indication that the selected item is available for auction for a period of time;

receiving, from each of a plurality of bidders, at least one bid to purchase the selected item, in which each bid is received before the period of time has expired and each bidder is located remotely from the server;

determining that the period of time has expired based on determining that:

1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and

2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value; and

determining a winning bid for the selected item based on predetermined criteria.

12. (Original) The method of claim 11 further comprising receiving each bid via a wireless connection.

13. (Previously Presented) The method of claim 11, in which each of the plurality of bidders submits the at least one bid using a wireless device.

14. (Previously Presented) The method of claim 11 further comprising:
receiving each bid associated with the item via an auction site.
15. (Previously Presented) The method of claim 11, in which each of a plurality of items is associated with an electronic bidsheet that is stored ~~at~~ in the server, and in which, the electronic bidsheet comprise at least one bid to purchase the item.
16. (Previously Presented) The method of claim 15, in which each electronic bidsheet comprises a description of the associated item.
17. (Previously Presented) The method of claim 11, in which each of the plurality of bidders uses a local client to submit a bid, in which each client comprises a graphical user interface that is operable to receive an identifier of each bidder.
18. (Previously Presented) The method of claim 17, in which the identifier of the bidder comprises a card number that coupled with a card reader is operable to process a card associated with the card number.
19. (Cancelled).
20. (Previously Presented) The method of claim 11, in which the pre-determined criteria comprises:

determining that a value associated with the winning bid is greater than a plurality of other values associated with other bids submitted during the period of time.

21-37. (Cancelled).

38. (Previously Presented) The method of claim 11 further comprising:
receiving a payment for the selected item from a bidder who submitted the winning bid;
and
delivering the selected item to the bidder who submitted the winning bid.

39. (Previously Presented) The method of claim 11 further comprising:
receiving at least one other bid from at least one other customer after the period of time has expired; and
notifying the other customer that the other bid has been rejected.

40. (Previously Presented) The method of claim 11, in which the first quantity is greater than the second quantity.

41. (Previously Presented) An apparatus comprising:
a processor; and
a memory, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 11.

42. (Previously Presented) The apparatus of claim 41 further comprises:
instructions that direct the processor to perform the method of claim 12.
43. (Previously Presented) The apparatus of claim 41, in which each of the plurality of bidders submits the at least one bid using a wireless device.
44. (Previously Presented) The apparatus of claim 41 further comprises
instructions that direct the processor to perform the method of claim 14.
45. (Previously Presented) The apparatus of claim 41, in which each of a plurality of items is associated with an electronic bidsheet that is stored in the server, in which the electronic bidsheet comprise at least one bid to purchase the item.
46. (Previously Presented) The apparatus of claim 45, in which each electronic bidsheet comprises a description of the associated item.
47. (Previously Presented) The apparatus of claim 41, in which each of the plurality of bidders uses a local client to submit a bid, in which each client comprises a graphical user interface that is operable to receive an identifier of each bidder.
48. (Previously Presented) The apparatus of claim 47, in which the identifier of the bidder comprises a card number that coupled with a card reader is operable to process a card associated with the card number.

49. (Previously Presented) The apparatus of claim 41, in which the predetermined criteria comprises:

determining that a value associated with the winning bid is greater than a plurality of other values associated with other bids submitted during the period of time.

50. (Previously Presented) The apparatus of claim 41 further comprises:

instructions that direct the processor to perform the method of claim 38.

51. (Previously Presented) The apparatus of claim 41 further comprises:

instructions that direct the processor to perform the method of claim 39.

52. (Previously Presented) The apparatus of claim 41, in which the first quantity is greater than the second quantity.

53. (Previously Presented) An article of manufacture comprising:

a storage medium, in which the storage medium stores instructions which, when executed by a processor, direct the processor to perform the method of claim 11.

54. (Previously Presented) The article of manufacture of claim 53 further comprises:

instructions that direct the processor to perform the method of claim 12.

55. (Previously Presented) The article of manufacture of claim 53, in which each of the plurality of bidders submits the at least one bid using a wireless device.

56. (Previously Presented) The article of manufacture of claim 53 further comprises:
instructions that direct the processor to perform the method of claim 14.
57. (Previously Presented) The article of manufacture of claim 53, in which each of a plurality of items is associated with an electronic bidsheet that is stored in the server, in which the electronic bidsheet comprise at least one bid to purchase the item.
58. (Previously Presented) The article of manufacture of claim 57, in which each electronic bidsheet comprises a description of the associated item.
59. (Previously Presented) The article of manufacture of claim 53, in which each of the plurality of bidders uses a local client to submit a bid, in which each client comprises a graphical user interface that is operable to receive an identifier of each bidder.
60. (Previously Presented) The article of manufacture of claim 59, in which the identifier of the bidder comprises a card number that coupled with a card reader is operable to process a card associated with the card number.
61. (Previously Presented) The article of manufacture of claim 53, in which the predetermined criteria comprises:
determining that a value associated with the winning bid is greater than a plurality of other values associated with other bids submitted during the period of time.

62. (Previously Presented) The article of manufacture of claim 53 further comprises:
instructions that direct the processor to perform the method of claim 38.
63. (Previously Presented) The article of manufacture of claim 53 further comprises:
instructions that direct the processor to perform the method of claim 39.
64. (Previously Presented) The article of manufacture of claim 53, in which the first quantity
is greater than the second quantity.

X. EVIDENCE APPENDIX

None

XI. RELATED PROCEEDINGS APPENDIX

None